

ROBERT GARCIA

NAME

T-51858

PRISON NUMBER

P.O. BOX 290027 AG 120

CURRENT ADDRESS OR PLACE OF CONFINEMENT

REPRESA, CA 95671

CITY, STATE, ZIP CODE

2254	✓	1983
FILING FEE PAID		
Yes		No ✓
IF MONETARY FEE		
Yes	✓	No
CONSENT TO		
Court	✓	ProSe

**FILED**

AUG - 7 2008

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY RY DEPUTY**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**ROBERT GARCIA

(FULL NAME OF PETITIONER)

**PETITIONER**

v.

JIMMY WALKER(NAME OF WARDEN, SUPERINTENDENT, JAILOR, OR AUTHORIZED  
PERSON HAVING CUSTODY OF PETITIONER [E.G., DIRECTOR OF THE  
CALIFORNIA DEPARTMENT OF CORRECTIONS])**RESPONDENT**

and

The Attorney General of the State of  
California, Additional Respondent.**'08 CV 1441 W WMc**

Civil No.

(TO BE FILLED IN BY CLERK OF U.S. DISTRICT COURT)

**PETITION FOR WRIT OF HABEAS CORPUS****UNDER 28 U.S.C. § 2254  
BY A PERSON IN STATE CUSTODY**

1. Name and location of the court that entered the judgment of conviction under attack: SAN DIEGO SUPERIOR COURT, SAN DIEGO, CA
2. Date of judgment of conviction: 4-16-2002
3. Trial court case number of the judgment of conviction being challenged: SCD-164072
4. Length of sentence: 23 Years

CR

5. Sentence start date and projected release date: 4-16-02 to 2024
6. Offense(s) for which you were convicted or pleaded guilty (all counts): Two Counts of 2nd degree Robbery
7. What was your plea? (CHECK ONE)
- (a) Not guilty ☐
- (b) Guilty ☒
- (c) Nolo contendere ☐
8. If you pleaded not guilty, what kind of trial did you have? (CHECK ONE)
- (a) Jury ☐
- (b) Judge only ☐
9. Did you testify at the trial?
- ☐ Yes ☒ No

**DIRECT APPEAL**

10. Did you appeal from the judgment of conviction in the California Court of Appeal?
- ☒ Yes ☐ No
11. If you appealed in the California Court of Appeal, answer the following:
- (a) Result: Denied
- (b) Date of result, case number and citation, if known: 7-28-2006  
same as in above.
- (c) Grounds raised on direct appeal: Illegal sentence enhancement
12. If you sought further direct review of the decision on appeal by the California Supreme Court (e.g., a Petition for Review), please answer the following:
- (a) Result: Denied
- (b) Date of result, case number and citation, if known: June 11th, 2008  
S159382
- (c) Grounds raised: Breach of contract along with  
Illegal sentence enhancement

13. If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to that petition:

- (a) Result: \_\_\_\_\_
- (b) Date of result, case number and citation, if known: \_\_\_\_\_
- (c) Grounds raised: \_\_\_\_\_

**COLLATERAL REVIEW IN STATE COURT**

14. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Superior Court?

☒ Yes ☐ No

15. If your answer to #14 was "Yes," give the following information:

(a) California Superior Court Case Number: SCd-164077

(b) Nature of proceeding: Habeas Corpus

(c) Grounds raised: Illegal Sentence Enhancement

(d) Did you receive an evidentiary hearing on your petition, application or motion?

☐ Yes ☒ No

(e) Result: \_\_\_\_\_

(f) Date of result: \_\_\_\_\_

16. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Court of Appeal?

☒ Yes ☐ No

17. If your answer to #16 was "Yes," give the following information:

(a) California Court of Appeal Case Number: Unknown

(b) Nature of proceeding: Habeas Corpus

(c) Grounds raised: Illegal Sentence Enhancement

(d) Did you receive an evidentiary hearing on your petition, application or motion?

☐ Yes ☒ No

(e) Result: \_\_\_\_\_

(f) Date of result: \_\_\_\_\_

18. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the **California Supreme Court**?

☐ Yes ☐ No

19. If your answer to #19 was "Yes," give the following information:

(a) **California Supreme Court** Case Number: S159382

(b) Nature of proceeding: Habeas corpus

(c) Grounds raised: Breach of Contract, as well as  
Illegal Sentence Enhancement

(d) Did you receive an evidentiary hearing on your petition, application or motion?

☐ Yes ☒ No

(e) Result: Denied

(f) Date of result: June 11th, 2008

20. If you did *not* file a petition, application or motion (e.g., a Petition for Review or a Petition for Writ of Habeas Corpus) with the **California Supreme Court** containing the grounds raised in this federal Petition, explain briefly why you did not:

**COLLATERAL REVIEW IN FEDERAL COURT**

21. Is this your ~~first~~ federal petition for writ of habeas corpus challenging this conviction?

☐ Yes ☒ No (If "YES" SKIP TO #11)

(a) If no, in what federal court was the prior action filed? This one

(i) What was the prior case number? Same as this one

(ii) Was the prior action (CHECK ONE):

☒ Denied on the merits?

☒ Dismissed for procedural reasons?

(iii) Date of decision: \_\_\_\_\_

(b) Were any of the issues in this current petition also raised in the prior federal petition?

☒ Yes ☐ No

(c) If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this second or successive petition?

☐ Yes ☐ No

**CAUTION:**

- **Exhaustion of State Court Remedies:** In order to proceed in federal court you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. This means that even if you have exhausted some grounds by raising them before the California Supreme Court, you must first present *all* other grounds to the California Supreme Court before raising them in your federal Petition.
- **Single Petition:** If you fail to set forth all grounds in this Petition challenging a specific judgment, you may be barred from presenting additional grounds challenging the same judgment at a later date.
- **Factual Specificity:** You must state facts, not conclusions, in support of your grounds. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do. A rule of thumb to follow is — state who did exactly what to violate your federal constitutional rights at what time or place.

**GROUND FOR RELIEF**

22. State *concisely* every ground on which you claim that you are being held in violation of the constitution, law or treaties of the United States. Summarize *briefly* the facts supporting each ground. If necessary, you may attach pages stating additional grounds and/or facts supporting each ground.

(a) **GROUND ONE:** The Court imposed an Illegal Sentence Enhancement in violation of The 14th Amendment of the US constitution as well as Due process

Supporting FACTS (state briefly without citing cases or law) On April 16th, 2002, petitioner pled guilty to two counts of Robbery and was sentenced to a total of 23 years that included 3 serious felony priors (a total of 15 years) on top of the 8 years he was to receive as part of the plea Bargain. Since petitioner's prior serious felonies that were used to enhance his sentence were not actually two but one this was Illegal! (See attached Statement of facts of the Case) for exhibits to support Ground for relief.

Did you raise **GROUND ONE** in the California Supreme Court?

☒ Yes ☐ No.

(b) **GROUND TWO:** Petitioner's sentence was in violation of Due process being there was a Breach of Contract; being terms were not met. Supporting FACTS (state briefly without citing cases or law): On April 16th, 2002, petitioner after being offered a plea bargain of Eight (8) years for two counts of Robbery pled guilty... he was sentenced to a total of 23 years in state prison. This sentence included 3 serious felony enhancements (Priors) that was never included in the original agreement that petitioner agreed to. Nevertheless, the Court imposed the sentence anyway. (See Statement of facts of the Case) for exhibits.

Did you raise **GROUND TWO** in the California Supreme Court?

☒ Yes ☐ No.

(c) **GROUND THREE:** \_\_\_\_\_

Supporting **FACTS** (state *briefly* without citing cases or law): \_\_\_\_\_

Did you raise **GROUND THREE** in the California Supreme Court?

☐ Yes ☐ No.

(d) **GROUND FOUR:** \_\_\_\_\_

Supporting FACTS (state *briefly* without citing cases or law): \_\_\_\_\_

Did you raise **GROUND FOUR** in the California Supreme Court?

☐ Yes ☐ No.

23. Do you have any petition or appeal **now pending** in any court, either state or federal, pertaining to the judgment under attack?

☒ Yes ☐ No

24. If your answer to #23 is "Yes," give the following information:

(a) Name of Court: This one

(b) Case Number: Same

(c) Date action filed: \_\_\_\_\_

(d) Nature of proceeding: Habeas Corpus

(e) Grounds raised: Same

(f) Did you receive an evidentiary hearing on your petition, application or motion?

☐ Yes ☒ No

25. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing: \_\_\_\_\_

(b) At arraignment and plea: \_\_\_\_\_

(c) At trial: \_\_\_\_\_

(d) At sentencing: \_\_\_\_\_

(e) On appeal: \_\_\_\_\_

(f) In any post-conviction proceeding: \_\_\_\_\_

(g) On appeal from any adverse ruling in a post-conviction proceeding: \_\_\_\_\_

26. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

☒ Yes ☐ No

27. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

☐ Yes ☒ No

(a) If so, give name and location of court that imposed sentence to be served in the future:

\_\_\_\_\_

(b) Give date and length of the future sentence: \_\_\_\_\_

\_\_\_\_\_

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

☐ Yes ☐ No

28. Date you are mailing (or handing to a correctional officer) this Petition to this court: \_\_\_\_\_

\_\_\_\_\_

Wherefore, Petitioner prays that the Court grant Petitioner relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
SIGNATURE OF ATTORNEY (IF ANY)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

7-13-08

(DATE)

R Garcia

SIGNATURE OF PETITIONER

## **FORM A**

---

**MOTION AND DECLARATION UNDER PENALTY OF PERJURY IN SUPPORT OF  
MOTION TO PROCEED IN FORMA PAUPERIS**

---

FACTS OF THE CASE

1.

Petitioner was sentenced to 23 Years which included an additional 15 Years to wit. Three (3) serious Felony enhancements. Now it should be noted that during Petitioner's plea bargain, there was never any mention of any serious felony enhancement being included in the agreed upon sentence. In fact, the only time Petitioner's serious felony priors were mentioned for sentencing use was after Petitioner had pled guilty to the 2 Counts of Robbery (see copy of Plea Bargain agreement). Therefore, this was a violation of the Plea Bargain agreement, being the terms of the Plea Bargain were disregarded in favor of a more extensive sentence instead of the expected 8 year sentence Petitioner was entitled to by law. Without question his sentence is in fact illegal. Furthermore, on January 9th, 1983, petitioner pled guilty also in a Plea Bargain agreement to two counts of Burglary in the County of San Diego, (Case #CR66379 and #CR66380 (see copy of Prior Plea agreement dated January 9th, 1984, as exhibits C1 and C2) Prior to his Change of Plea on December 20th, 1983, both cases were consolidated and the resulting sentence of Four Years was served concurrent

2.

1 (See Abstract of Judgment dated September 11th, 1983,  
 2 as "exhibit D" and copies dated December 20th,  
 3 1983, of case # F81461 and case # F81493 that  
 4 shows the Consolidation of both cases as  
 5 exhibit "E1 and E-2") On January 11th, 1989,  
 6 petitioner was also convicted of Burglary  
 7 Penal code 459 this time by a jury of his  
 8 Peers in the County of Los Angeles, case # A  
 9 478490, in which he received six years for the  
 10 Burglary itself along with one 5 year enhancement  
 11 per P.C. 667.5(a) for a total of 12 years.  
 12 (See copy of Abstract of Judgment dated  
 13 February 27th, 1989, pgs. one and two as exhibit  
 14 F1 and F-2, At that time, the trial court  
 15 clearly recognized that petitioner's 1983 priors  
 16 were consolidated and counted as one and  
 17 therefore only enhanced petitioner with one  
 18 5 Year enhancement per P.C. 667(a).  
 19 Because they were not brought and tried  
 20 separately per P.C. 667(a).  
 21 Now, the trial court in the present case... by using  
 22 the same Criminal conviction to enhance his  
 23 sentence as a separate serious felony prior,  
 24 committed an Illegal sentence giving rise to  
 25 a denial of Due process, as applied to the 14th  
 26 Amendment (see exhibit A) ~~See~~ United States  
 27 v. Booker, 543 US 220, 226, 244 (2005) The  
 28 Supreme court held that mandatory provisions

3.

1 of the United States Sentencing Guidelines -  
 2 Unconstitutional. The Court found that the  
 3 Sentencing Guidelines regime under which a  
 4 Judge could enhance a Defendant's sentence  
 5 based solely on his or her determination of  
 6 fact (Neither) found by the Jury (Nor) admitted  
 7 by the Defendant violates the Sixth and four-  
 8 teenth Amendment right unless that fact is  
 9 a prior conviction. Booker explicitly extended  
 10 the Courts holding in Blakely v. Washington to  
 11 the Sentencing Guidelines. After Booker, Judges  
 12 must still consider the Sentencing Guidelines when  
 13 making a sentencing determination. The Guidelines  
 14 were promulgated by the United States Sentencing  
 15 Commission pursuant to the Sentencing Reform Act  
 16 of 1984. "This includes consolidated convictions and  
 17 sentences as in Petitioner's case. Such a prior  
 18 sentence imposed in related cases are treated as  
 19 one conviction sentence for purposes of calculating  
 20 the criminal history category. See Sentencing Guidelines,  
 21 Supra note 1 § 4A1.2(a)(2) prior conviction sentences  
 22 are not related if they were for offenses  
 23 separated by an intervening arrest. "See § 4A1.2  
 24 cmt. N.3 related cases are those which occurred  
 25 on the same occasion, were part of a single  
 26 common scheme or plan, or were consolidated  
 27 for trial or sentencing." See E.G. US v. Tacchiarini  
 28

4.

1 17) F. 3d 24, 34 (1st Cir. 1999) —  
 2 Petitioner's sentence for the two Robberies of  
 3 23 Years was also Illegal under the guidelines  
 4 of Penal Codes 1192.7 as well as 667 (a) and  
 5 therefore must be remanded to conform to  
 6 the sentencing guidelines involving serious  
 7 felony enhancements that are not brought  
 8 and tried separately per P.C. 667(a) and  
 9 P.C. 1192.7

10  
 11 2. Petitioner's sentence amounted to a Breach  
 12 of Contract,  
 13 Petitioner's sentence was a "Breach of Contract"  
 14 being the terms of the agreement were not met.  
 15 when Petitioner's Plea agreement was made ... the  
 16 trial court agreed to strike Petitioner's prior strikes  
 17 Case # CR 66379 and 66380, there was never any  
 18 mention of any serious felony enhancements until  
 19 after Petitioner had pled guilty and was sentenced  
 20 (See above mentioned) The trial court then  
 21 chose instead to enhance his sentence to the  
 22 more extensive one of 23 Years which included  
 23 3 serious felony enhancements for a total of  
 24 15 Years to be served consecutively to the court's  
 25 Eight(8) Year sentence (the mid term) agreed  
 26 upon in the original plea bargain. In US V. Rivera  
 27 357 F. 3d 290 295, (3d Cir. 2004) Plea agreement,  
 28 reserving right of Government to take any position

5.

1 with respect to the appropriate sentence to be  
2 imposed on Defendant did not allow Government  
3 to advocate for sentencing enhancement because  
4 plea also stipulated to defendant's offense level  
5 Any ambiguity should be construed against  
6 Government; Brown v. Poole, 337 F.3d 1155, 1159-  
7 60 (9th Cir. 2003) Disputed terms were part of  
8 plea agreement because defendant reasonably  
9 understood prosecutor's promises as part of  
10 bargain and promises prompted acceptance  
11 of agreement. US v. Guzman, 318 F.3d 1191, 1195  
12 (10th Cir. 2003) Court construes any ambiguities  
13 against government as drafted of agreement;  
14 US v. Nyhuis, 8 F.3d 731, 741-42 (11th Cir. 1993)  
15 Courts will not permit Government to prevail  
16 on formalistic, literal interpretation of plea  
17 agreement language. The trial judge used his  
18 discretionary power to strike and dismiss  
19 case # CR 6637 and CR 66380 priors in the  
20 furtherance of justice. The trial judge  
21 general statutory authority to dismiss an  
22 action in the furtherance of justice under  
23 1385 which includes the power to strike a  
24 prior conviction for purposes of sentencing  
25 whether or not the conviction has been admitted  
26 or established by evidence, which he chose to  
27 do in petitioner's case during sentencing. The power  
28 to strike a charge of a prior conviction whether

6.

1 or not it has been admitted or established  
 2 by evidence is within the power referred to in  
 3 section 1385. The procedure of striking or setting  
 4 aside or dismissing a prior conviction or any  
 5 of the multiple counts or allegations of an  
 6 indictment or information at the time of  
 7 sentencing is not expressly provided for by the  
 8 statute, but it is commonly used in trial courts.  
 9 Not only where the prior conviction has been  
 10 shown, but the trial courts have concluded in  
 11 the interest of justice that a defendant should  
 12 not be required to undergo a statutorily  
 13 increased penalty which would follow from  
 14 judicial determination of the facts.  
 15 It is a long standing rule of construction, that  
 16 a statute should be interpreted favorably to the  
 17 defendant. The trial judge can not be said to  
 18 have committed the functional equivalent of  
 19 striking the priors when in fact he  
 20 imposed a consecutive 10 years enhancement for  
 21 the 1984 prior case. There is no logical procedure  
 22 by which he could have stricken the priors and  
 still arrive at the sentence he chose.  
 23 The charges underlying the two burglaries of 1984  
 24 were not made in formally distinct proceedings  
 25 prior felony proceedings must be totally separate  
 26 not only during proceedings before trial but also  
 27 as to those leading to the ultimate adjudication  
 28 of guilt. -- The language of section 667

is virtually the same as the Past Section 664 In this regard. The Phrase and term, "Charges brought and tried Separately" has well established a long understanding meaning. The attorney General himself recognized that meaning in his guild to Proposition 8. In which he stated under Subdivision (a) of P.C. 667, to qualify for enhancement, a Prior Conviction must have been "brought and tried separately". Therefore A JOINT

TRIAL AND THE CONSOLIDATION OF BOTH 1984 CASES PRODUCE THE POTENTIAL FOR ONLY ONE ENHANCEMENT NOT TWO! The Pleas to both offenses were jointly taken and petitioner was sentenced in a single proceeding, thereby transmuting the two required elements of the enhancement into one after they were consolidated on December 20th, 1983 (See COPY of Plea dated January 9th, 1984 Exhibit C and Exhibit E-1, E-2) The Plea Bargain in that case provided that once petitioner pled guilty to the two counts of Burglary he would receive the mid term of four (4) years the same in the present case except only this time he was to receive Eight (8) years. Nevertheless, the trial Court did not adhere to its agreement and in the interest of justice the unjust sentence should be modified in order to meet the mid term of 8 years as agreed upon and, without the Enhancements.

# EXHIBIT COVER PAGE

A

EXHIBIT

Description of this exhibit:

*ABSTRACT OF JUDGMENT - PRISON COMMITMENT  
DATED MAY 17TH 2002.*

Number of pages to this exhibit: 1 pages

**JURISDICTION:** (Check One Only)

- ☐ MUNICIPAL COURT
- ☒ SUPERIOR COURT
- ☐ APPELLATE COURT
- ☐ STATE SUPREME COURT
- ☒ UNITED STATES DISTRICT COURT
- ☐ STATE CIRCUIT COURT
- ☐ UNITES STATES SUPREME COURT
- ☐ GRAND JURY

ABSTRACT  
[NOT V]COMMITMENT DETERMINATE  
PAGE TWO OF CR-290 ATTACHED

CR-290

EXHIBIT  
'A'

<input checked="" type="checkbox"/> SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN		<input type="checkbox"/> MUNICIPAL BRANCH OR JUDICIAL DISTRICT	
PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: ROBERT GARCIA AKA: CII#: 06959495 BOOKING #: 01179781			
COMMITMENT TO STATE PRISON ABSTRACT OF JUDGMENT		<input type="checkbox"/> NOT PRESENT <input type="checkbox"/> AMENDED ABSTRACT	
DATE OF HEARING 05-17-02	DEPT. NO. 31	JUDGE JOHN M. THOMPSON	
CLERK S. BLEVINS	REPORTER K. KELLER	PROBATION NO. OR PROBATION OFFICER A601310	
COUNSEL FOR PEOPLE DENNIS PANISH		COUNSEL FOR DEFENDANT TRACY MACUGA <input type="checkbox"/> APPTD.	

MAY 17 2002

By: SHERRY BLEVINS, L

1. Defendant was convicted of the commission of the following felonies:

☐ Additional counts are listed on attachment  
 (number of pages attached)

CNT.	CODE	SECTION NO.	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (MO./DATE/YEAR)	CONVICTED BY			TERM (L./M./Y)	CONCURRENT	CONSECUTIVE 1/3 VIOLENT	CONSECUTIVE 1/3 NON-VIOLENT	CONSECUTIVE FULL TERM	INCOMPLETE SENTENCE (1-1/2 to 2 yrs)	ESL STAY	PRINCIPAL OR CONSECUTIVE TIME IMPOSED	
						JURY	COURT	PLEA								YRS.	MOS.
1	PC	211**	2ND DEGREE ROBBERY	2001	04-16-02			X	M							6	0
2	PC	211**	2ND DEGREE ROBBERY	2001	04-16-02			X	M			X				2	0

2. ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS (mainly in the PC 12022 series). List each count enhancement horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST enhancements stricken under PC 1385.

CNT.	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL

3. ENHANCEMENTS charged and found to be true FOR PRIOR CONVICTION OR PRISON TERMS (mainly in the PC 667 series). List all enhancements horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST enhancements stricken under PC 1385.

ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL
PC667(A)(1)	5	PC667(A)(1)	5	PC667(A)(1)	5			15 0

- ☒
- Defendant was sentenced pursuant to PC 667 (b)-(i) or PC 1170.12 (two-strikes).

4. INCOMPLETED SENTENCE(S) CONSECUTIVE

COUNTY	CASE NUMBER

5. TOTAL TIME ON ATTACHED PAGES:

- 7.
- ☐
- Additional indeterminate term (see CR-292).

8. TOTAL TIME: 23 0

This form is prescribed under PC 1213.5 to satisfy the requirements of PC 1213 for determinate sentences. Attachments may be used but must be referred to in this document.

(Continued on reverse)

ABSTRACT OF JUDGMENT - PRISON COMMITMENT - DETERMINATE  
[NOT VALID WITHOUT COMPLETED PAGE TWO OF CR-290 ATTACHED]

# EXHIBIT COVER PAGE

B

EXHIBIT

Description of this exhibit:

RECORD OF PLEA AGREEMENT AND  
STICKEN PRIORS CASES #CR66379 - #CR66380  
DATED 5-17-2002

Number of pages to this exhibit: 1 pages

**JURISDICTION:** (Check One Only)

- ☐ MUNICIPAL COURT
- ☒ SUPERIOR COURT
- ☐ APPELLATE COURT
- ☐ STATE SUPREME COURT
- ☒ UNITED STATES DISTRICT COURT
- ☐ STATE CIRCUIT COURT
- ☐ UNITES STATES SUPREME COURT
- ☐ GRAND JURY

SOS

SCD164077 DA AAP14201

EXHIBIT  
"B"

CALIFORNIA, COUNTY OF SAN DIEGO

DATE 05-17-02 AT 01:30M.

PROB HEAR-SENTENCING

PRESENT: HON JOHN H. THOMPSON

RESIDING DEPARTMENT 031

CLERK

REPORTER

CSR

REPORTER'S ADDRESS: P.O. BOX 120128, SAN DIEGO, CA 92112-0128

THE PEOPLE OF THE STATE OF CALIFORNIA  
VS.

DEPUTY DISTRICT ATTORNEY

GARCIA

ROBERT

R - T. MACUGA

DEFENDANT

ATTORNEY FOR DEFENDANT (PD/APD/CC/RETAINED)

VIOLATION OF

PC211

PC211

ALLEGATIONS

PRIORS

INTERPRETER

OATH ON FILE/SWORN

LANGUAGE

DEFENDANT ☒ PRESENT ☐ NOT PRESENT ☐ NOT PRODUCED

REVIEW ☐ DEFENDANT ADVISED OF RIGHTS AND ADMITS/DENIES A VIOLATION OF PROBATION ☐ WAIVES HEARING.  
 PROBATION IS: FORMALLY/SUMMARILY ☐ REVOKED ☐ REINSTATED ☐ MODIFIED ☐ CONTINUED ☐ ST&C ☐ EXTENDED TO: \_\_\_\_\_

☒ WAIVES ARRAIGNMENT. ☐ ARRAIGNED FOR JUDGMENT. ☐ IMPOSITION/EXECUTION OF SENTENCE IS SUSPENDED. ☐ STIPULATED SENTENCE.

PROBATION IS: ☒ DENIED ☐ GRANTED \_\_\_\_\_ YEARS (FORMAL/SUMMARY) TO EXPIRE \_\_\_\_\_

☐ COMMITMENT TO SHERIFF FOR \_\_\_\_\_ DAYS. STAYED TO: \_\_\_\_\_. ☐ ADULT INST. RECOMMENDED. ☐ PAROLE NOT TO BE GRANTED.

☐ PERFORM \_\_\_\_\_ HRS/DAYS PSP/VOL. WORK AT NONPROFIT ORG. SUBMIT PROOF TO PROBATION/COURT BY \_\_\_\_\_

U ☐ FOURTH AMENDMENT WAIVER OF PERSON/AUTO/RESIDENCE/PERSONAL EFFECTS. ☐ SHORT TERM WORK FURLOUGH, REPORT: \_\_\_\_\_

D ☐ FURTHER CONDITIONS ARE SET FORTH IN PROBATION ORDER. ☐ VEHICLE INTERLOCK DEVICE (VC 13386/23575).

G ☐ DEFENDANT IS COMMITTED TO THE CALIFORNIA YOUTH AUTHORITY ☐ PER WI 1737

G ☐ DEFENDANT IS COMMITTED TO THE DEPARTMENT OF CORRECTIONS ☐ PER PC 1170(d).

M ☐ FOR \_\_\_\_\_ LOWER/MIDDLE/UPPER TERM OF \_\_\_\_\_ (YEARS/MONTHS TO LIFE)

M ☐ ON COUNT \_\_\_\_\_ CODE & NO. \_\_\_\_\_ ☐ PRINCIPAL COUNT.

E ☐ CIRCUMSTANCES IN MITIGATION/AGGRAVATION OUTWEIGH THOSE IN MITIGATION/AGGRAVATION.

N ☐ NO VISITATION. PER PC 1202.05. VICTIM IS UNDER 13 YRS. OF AGE. DA TO COMPLY WITH NOTICES.

N ☐ DEFENDANT IS ADVISED REGARDING PAROLE/APPEAL RIGHTS. ☐ REGISTRATION PER PC 290/HS 11590/PC 457.1/PC 186.30 ☐ TESTING PER PC 1202.1/PC 296.

T ☐ FINE OF \$ \_\_\_\_\_ PLUS PENALTY ASSESSMENT

T ☐ RESTITUTION FINE OF \$ \_\_\_\_\_ PER PC 1202.4(b). ☒ FORTHWITH PER PC 2085.5.

T ☐ RESTITUTION FINE OF \$ \_\_\_\_\_ PER PC 1202.45 SUSPENDED UNLESS PAROLE IS REVOKED.

☐ RESTITUTION TO VICTIM(S) PER P.O.'S REPORT/REST. FUND PER PC 1202.4(f) OF \$ \_\_\_\_\_ IN AN AMOUNT TO BE DETERMINED.

☐ AT \$ \_\_\_\_\_ PER MONTH. ☐ COMBINED RATE. TO START 60 DAYS AFTER RELEASE/ON \_\_\_\_\_ THROUGH REVENUE AND RECOVERY.

☐ DEFENDANT TO PAY PRE-PEA INVESTIGATION AND REPORT PREPARATION COSTS. ☐ DEFENDANT TO PAY BOOKING FEES.

☐ REFERRED TO REVENUE AND RECOVERY. ☐ COURT APPOINTED ATTORNEY FEES ORDERED IN THE AMOUNT OF \$ \_\_\_\_\_

CREDIT FOR TIME SERVED
174 DAYS LOCAL
0 DAYS STATE INST.
25 DAYS PC 4019/2933.1
199 TOTAL DAYS CREDIT

TOTAL: 23 yrs

CS ☒ DEFENDANT REMANDED TO CUSTODY OF SHERIFF. ☐ WITHOUT BAIL. ☐ WITH BAIL SET AT \$ \_\_\_\_\_  
 JT ☐ DEFENDANT ORDERED RELEASED FROM CUSTODY. ☐ ON PROBATION. ☐ ON OWN/SUPERVISED RECOGNIZANCE. ☐ ON DEJ. ☐ THIS CASE ONLY.  
 SA ☐ DEFENDANT TO REMAIN AT LIBERTY. ☐ ON BOND POSTED \$ \_\_\_\_\_. ☐ ON PROBATION. ☐ ON DEJ. ☐ ON OWN/SUPERVISED RECOGNIZANCE.

H ☐ DEFENDANT WAIVES STATUTORY TIME FOR PRONOUNCEMENT OF JUDGMENT.

H ☐ DEFENDANT REFERRED FOR DIAGNOSTIC EVALUATION. ☐ PER PC 1203.03. ☐ PER WI 707.2.

H ☐ CONTINUED TO/SET FOR \_\_\_\_\_ AT \_\_\_\_\_ IN DEPT. \_\_\_\_\_ ON MOTION

OF COURT.DDA.DEFENDANT/PROBATION OFFICER. REASON:

W ☐ BENCH WARRANT TO ISSUE. BAIL SET AT \$ \_\_\_\_\_. ☐ SERVICE FORTHWITH. ☐ ORDERED WITHHELD TO \_\_\_\_\_

W ☐ BENCH WARRANT ISSUED/ORDERED \_\_\_\_\_ IS RECALLED/RESCINDED.

W ☐ BAIL IS ☐ EXONERATED. ☐ FORFEITED. AMOUNT \$ \_\_\_\_\_. BOND NO. \_\_\_\_\_

W ☐ BOND COMPANY \_\_\_\_\_ AGENT \_\_\_\_\_

M ☐ PROCEEDINGS SUSPENDED ☐ PER PC 1368, MENTAL COMPETENCY. (SEE BELOW FOR DATES OF EXAMINATION AND HEARING.)

M ☐ PER WI 3051, ADDICTION OR DANGER OF ADDICTION. (SEE BELOW FOR SERVICE DATE OF PETITION AND ORDER.)

O ☐ SUPPLEMENTAL REPORT ORDERED. ☒ REPORT TO REGISTRAR OF VOTERS. ☐ DMV ABSTRACT. B.A.C. \_\_\_\_\_

O ☐ PROBATION TO SUBMIT POST-SENTENCE REPORT DIRECTLY TO THE D.A.C. PER PC 1203c.

us to Ct 2 PC 211 - 1/3 mid term 2 yrs, consecutive  
 PC 667(a)(1) x 3 = 5 years each = 15 years, consecutive  
 Court strikes CR 66379 + CR 66380 strike priors (2  
 Am M

# EXHIBIT COVER PAGE c

EXHIBIT

Description of this exhibit:

*COPIES OF PLEA BARGAIN OF CASES  
#CR66379 - #CR66380 DATED 1-9-1984*

Number of pages to this exhibit: 2 pages

**JURISDICTION:** (Check One Only)

- ☐ MUNICIPAL COURT
- ☒ SUPERIOR COURT
- ☐ APPELLATE COURT
- ☐ STATE SUPREME COURT
- ☒ UNITED STATES DISTRICT COURT
- ☐ STATE CIRCUIT COURT
- ☐ UNITED STATES SUPREME COURT
- ☐ GRAND JURY

EXHIBIT  
'C'

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

THE PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff,

vs.

F

Robert D. Zumbach, Clerk

D

Robert Garcia

BY

Defendant.

DEPUTY

CASE NUMBER

F-81461

DA- A 74470

CHANGE OF PLEA

(GUILTY)



Comes now

Robert Garcia

defendant in the above-entitled criminal action, and in support of his motion to change his plea, made in open court personally and by his attorney, does declare

1. That his attorney in the above-entitled criminal action is

Robert J. Starnes

RG

2. That he is charged in

complaint

number

F-81461

with having violated

PC 459 in Count I (1st degree residential burglary)

+ PC 496.1 in Count II (receiving stolen property)

RG

3. That he desires to change his pleas and desires to plead guilty to

PC 459 (1st degree residential)

Section Code Section(s) and Count(s)

RG

including lesser offense(s) to which pleas to be made

4. That he

is

now and

was

at the time this form was prepared in possession of all his faculties

and has not consumed any drug, narcotic or alcoholic beverage in the 24 hour period preceding the entry of this plea to the extent that his sound judgment is impaired

RG

5. That he

does

understand the nature of the charge(s) against him

RG

6. That he

has

discussed the nature of the charge(s) against him and the possible defenses thereto with

his attorney

RG

7. That he violated the aforementioned Penal Code section(s) by

entering an isolated residence with the intent to commit a theft therein on or about 12-11-83 in the City and County of San Diego

RG

8. That his attorney

has

explained and discussed his constitutional rights with him, that he understands

his constitutional rights, that his constitutional rights have not been violated, that his attorney has specifically explained to him (1) the right to a jury trial, (2) the right to confront those witnesses who would testify against him and to cross examine those witnesses, (3) the right to testify in his own behalf or not to testify, (4) he desires to remain silent, (5) the right to have witnesses and documents subpoenaed by the Court for use at trial, that defendant knowingly and intelligently gives up these constitutional rights

RG

9. That his decision to change his pleas

has

been made freely and voluntarily, without threat or

fear to him or to anyone closely related to or associated with him,

RG

10. That his attorney

has

explained the possible sentence and understands the maximum possible punishment to be

County Prison

RG

and further that in the event he is sentenced to State Prison, he will be placed on parole for a period of

49 months

RG

11. That he understands if he is granted probation and the Court finds he has violated the terms of probation he could be sentenced to State Prison at that time. For the maximum sentence of

6

years regardless of any other

RG

EXHIBIT  
"C2"

12. That he ~~has not~~ <sup>has</sup> been induced to plead guilty by any promise or representation of a lesser sentence, probation, reward, immunity, or anything else. If defendant's plea of guilty is the result of discussions with the District Attorney (e.g., that the District Attorney has agreed to move to dismiss a count if defendant pleads guilty to another count), explain briefly such promise or plea bargaining, in the following space: D.A. agrees to concurrent sentence with case # F81493 and with any CYA parole revocation based on these cases. D.A. also agrees to mid-term bid of 4 years not to preclude arguing for less

13. That he is <sup>(is/is not)</sup> eligible for probation and that he does <sup>(does/does not)</sup> understand that the matter of probation and sentence is to be determined solely by the court

14. That he is pleading guilty because in truth and in fact he is <sup>(is/is not)</sup> guilty, and for no other reason Defendant has (cross out the inapplicable phrase)

- ~~1. personally prepared and discussed with his attorney~~
2. read, discussed, and has had explained to him by his attorney,

each of the above items, and understands same. Defendant has initialed each item as proof thereof.

Executed this 9 day of JAN, 1984 in the County of San Diego, State of California

Robert Garcia  
Defendant's signature.

Robert J. Stall Jr.

states that he is the attorney for defendant in the above-entitled criminal action, that he personally read, discussed and explained the contents of the above declaration of the defendant and each item thereof, that defendant's constitutional rights have not been violated, that no meritorious defense exists to the charges to which defendant is pleading guilty, that he personally observed the defendant (fill in, and initial each item, or read and initial each item) acknowledging explanation of the contents of each item, that he observed defendant date and sign said declaration, that he concurs in defendant's withdrawal of his pleas of not guilty, that he concurs in defendant's pleas of guilty to the charges as set forth by the defendant in the above declaration.

Dated this 9th day of January, 1984  
Robert J. Stall Jr.  
Attorney's signature.

The People of the State of California, plaintiff in the above-entitled criminal action, by and through its attorney, EDWIN L. MILLER, JR., District Attorney, concurs in the defendant's withdrawal of his pleas of not guilty, and in the defendant's plea of guilty to the charges as set forth by the defendant in the above declaration.

Dated this 9 day of January, 1984

EDWIN L. MILLER JR.  
District Attorney

B, (Signature)  
Deputy District Attorney

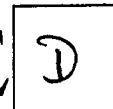
Defendant personally and by his attorney having in open court moved to withdraw his pleas of not guilty as heretofore entered and the People of the State of California, by and through its attorney, having concurred in said motion,

IT IS HEREBY ORDERED that said motion be and the same is hereby granted.

Dated 1/9/84

(Signature)  
Judge of the Superior Court

# EXHIBIT COVER PAGE



EXHIBIT

Description if this exhibit:

*ABSTRACT OF JUDGMENT OF CASES  
#CR66379 - #CR66380  
DATED 9-11-1985*

Number of pages to this exhibit: 1 pages

**JURISDICTION:** (Check One Only)

- ☐ MUNICIPAL COURT
- ☒ SUPERIOR COURT
- ☐ APPELLATE COURT
- ☐ STATE SUPREME COURT
- ☒ UNITED STATES DISTRICT COURT
- ☐ STATE CIRCUIT COURT
- ☐ UNITES STATES SUPREME COURT
- ☐ GRAND JURY

.....

G. FREEMAN

SENTENCE RELATION

100

OF CORP

\*CREDITS TO BE DETERMINED BY DEPT-OF COM!

DISTRIBUTION: PINK COPY - COURT FILE, YELLOW COPY - DEPARTMENT OF CORRECTIONS, WHITE COPY - ADMINISTRATIVE OFFICE OF THE COURTS.

# EXHIBIT COVER PAGE E

EXHIBIT

Description of this exhibit:

"CONSOLIDATION" OF BOTH CASES

#CR6637 - #CR66380

F81461 - F81493

DATED DEC, 20, 1983

Number of pages to this exhibit: 2 pages

**JURISDICTION:** (Check One Only)

- ☐ MUNICIPAL COURT
- ☐ SUPERIOR COURT
- ☐ APPELLATE COURT
- ☐ STATE SUPREME COURT
- ☒ UNITED STATES DISTRICT COURT
- ☐ STATE CIRCUIT COURT
- ☐ UNITES STATES SUPREME COURT
- ☐ GRAND JURY

DEC 19 1983

3  
F81461  
DDA/BSA *Cliff P. Dobrin*  
DEFENSE COUNSEL *Robert Stall (A)*  
REPORTER: *J. X. X.*  
PROB. OFF.

CR 66380

DEFENDANT PRESENT.

A bail hearing was held

Motion by Counsel for defendant \_\_\_\_\_  
For *Induction* \_\_\_\_\_ Take no position \_\_\_\_\_  
The People: Object \_\_\_\_\_ Concur \_\_\_\_\_ Denied \_\_\_\_\_  
Motion granted \_\_\_\_\_

*continued*  
Bail hearing in Dept. *F* on *12-20-83* at *8:30 A.M.*

Bail set at \$ *4,000*

*Induction*  
Commitment issued

H. RONALD DOMNITZ

DEC 20 1983

DDA/BSA  
DEFENSE COUNSEL  
REPORTER:  
PROB. OFF.

*Clifford P. Dobrin*  
*in person and by Robert Stall (A)*  
*Lucie Henderson*

*Case before court for bail review.*

Case continued to *1-6-84* at *2:30 P.M.* in *Room 6*

Defendant is hereby ordered to appear for preliminary hearing  
in Presiding Dept. on *1-12-84* at *8:15 AM* (1 hour)

*Vacate 12-29-83 Preliminary hearing date*  
*Consolidate with case # F81493.*

TIME WAIVED

*as*  
Bail set at \$ *4,000*

COMMITMENT ISSUED

H. RONALD DOMNITZ

DEC 20 1983

DDA/Def: Clifford P. Dobbin  
 DEFENSE COUNSEL: in person and by Robert Stall (R)  
 REPORTER: E. Henderson  
 PROB. OFF.

Case before the Court at the request of defense counsel.

Case continued to 1-6-84 @ 2:30 p.m. in MC 6.

Defendant is hereby ordered to appear for preliminary hearing  
 in Presiding Dept. on 1-12-84 at 8:15 AM.

Bail reviewed date of 12-22-83 @ 8:30 AM is  
 Waived. Preliminary hearing date of  
 1-4-84 is vacated.  
 Consolidate with case # F81461.

TIME WAIVED

Bail/Set at \$5,000.

COMMITMENT ISSUED

H. RONALD DOMNITZ

JAN 6 1984

Transferred from Presiding department to Dept. MC-6

DDA/Def: P. Quinn  
 DEFENSE COUNSEL: in person and by R. Stall  
 REPORTER: Cathy Willis  
 PROB. OFF:

Case continued to 1-9-84 at 8:15 AM. M-C-6 Proposition

No disposition reached at this time.  
 Preliminary hearing date to remain as set.

Bail: \$5,000

COMMITMENT ISSUED.

E. MAC AMOS, JR.

7

JAN 9 1984

PROBATION Officer

# EXHIBIT COVER PAGE F

EXHIBIT

Description if this exhibit:

ABSTRACT OF JUDGMENT FROM LOS  
ANGELES CASE, SHOWING ONE PRIOR  
P.C. 667.(a) AND ONE ENHANCEMENT OF  
5 YEARS FOR THE 1983 PRIORS THAT  
WERE CONSOLIDATED..

Number of pages to this exhibit: 2 pages

**JURISDICTION:** (Check One Only)

- ☐ MUNICIPAL COURT
- ☒ SUPERIOR COURT
- ☐ APPELLATE COURT
- ☐ STATE SUPREME COURT
- ☒ UNITED STATES DISTRICT COURT
- ☐ STATE CIRCUIT COURT
- ☐ UNITES STATES SUPREME COURT
- ☐ GRAND JURY

EXHIBIT  
F-1ABSTRACT OF JUDGMENT - COMMITMENT  
SINGLE OR CONCURRENT COUNT FORM  
(Not to be used for Multiple Count Convictions nor Consecutive Sentences)

FORM DSL 290.1

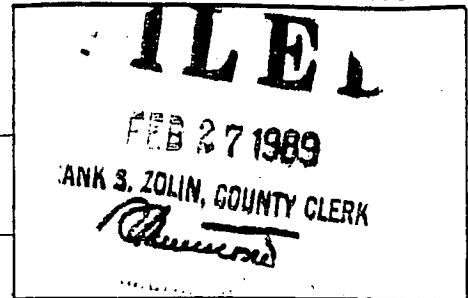
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES  
COURT I.D. 1,9,0,0,0,9  
BRANCH SOUTHEAST

PEOPLE OF THE STATE OF CALIFORNIA

versus

DEFENDANT: GARCIA, ROBERT☒ PRESENT☐ NOT PRESENT

AKA:

COMMITMENT TO STATE PRISON  
ABSTRACT OF JUDGMENT☐ AMENDED  
ABSTRACTCASE NUMBER  
A 478490DATE OF HEARING  
(MO) (DAY) (YR)  
02, 27, 89DEPT. NO.  
SE PJUDGE  
R.P. KALUSTIANCLERK  
R. ZAGONREPORTER  
G. HALLCOUNSEL FOR PEOPLE  
P. MILLETTCOUNSEL FOR DEFENDANT  
R. VAN SLODENPROBATION NO. OR PROBATION OFFICER  
X 244005

## 1. DEFENDANT WAS CONVICTED OF THE COMMISSION OF THE FOLLOWING FELONY:

COUNT	CODE	SECTION NUMBER	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION			CONVICTION BY			TERM (L.M.U.)	TIME IMPOSED	
					MO	DAY	YEAR	JURY TRIAL	COURT TRIAL	PLEA		YEARS	MONTHS
1	PC	459*	ROBBERY, 1st DEG.	88	01	11	89	X			U	6	

## 2. ENHANCEMENTS (CHARGED AND FOUND, STRICKEN, TIME IMPOSED):

COUNT	12022(a)			12022(b)			12022.3(a)			12022.3(b)			12022.5			12022.6(a)			12022.6(b)			12022.7			12022.8		
	C/F	S	I	C/F	S	I	C/F	S	I	C/F	S	I	C/F	S	I	C/F	S	I	C/F	S	I	C/F	S	I	C/F	S	I

## 3. OTHER ORDERS:

## 4. A. NUMBER OF PRIOR PRISON TERMS:

S	C/F	S	I
667.5(a)			
667.5(b)	1	0	1
667.6(b)			

## B. NUMBER OF PRIOR FELONY CONVICTIONS:

S	C/F	S	I
667.6(a)	1	0	1
			5

## 5. TIME STAYED § 1170.1(f) [DOUBLE BASE LIMIT]:

6. TOTAL TERM IMPOSED: 127. ☐ THIS SENTENCE IS TO RUN CONCURRENT WITH ANY PRIOR UNCOMPLETED SENTENCE(S).

## 8. EXECUTION OF SENTENCE IMPOSED:

A. ☒ AT INITIAL SENTENCING HEARING B. ☐ AT RESENTENCING PURSUANT TO DECISION ON APPEAL C. ☐ AFTER REVOCATION OF PROBATION D. ☐ AT RESENTENCING PURSUANT TO RECALL OF COMMITMENT [PC 51170(d)]9. DATE SENTENCE PRONOUNCED: MO 02 DAY 27 YEAR 89 CREDIT FOR TIME SPENT IN CUSTODY: 299 INCLUDING: ACTUAL LOCAL TIME 199 LOCAL CONDUCT CREDITS 100 STATE INSTITUTIONS ☐ DMH ☐ CDC

## 10. DEFENDANT IS REMANDED TO THE CUSTODY OF THE SHERIFF, TO BE DELIVERED:

☒ FORTHWITH INTO THE CUSTODY OF THE DIRECTOR OF CORRECTIONS AT THE RECEPTION-GUIDANCE CENTER LOCATED AT:  
☐ AFTER 48 HOURS, EXCLUDING SATURDAYS, SUNDAYS AND HOLIDAYS  
☐ CALIF. INSTITUTION FOR WOMEN - FRONTERA ☐ CALIF. MEDICAL FACILITY - VACAVILLE ☒ CALIF. INSTITUTION FOR MEN - CHINO  
☐ OTHER (SPECIFY):

CLERK OF SUPERIOR COURT

I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

DEPUTY'S SIGNATURE

*[Signature]*

DATE

MAR 02 1989

This form is prescribed pursuant to Penal Code § 1213.5 to satisfy the requirements of Penal Code § 1213 (Abstract of Judgment and Commitment) for determinate sentences under Penal Code § 1170. A copy of probation report shall accompany the Department of Corrections' copy of this form pursuant to Penal Code § 1203c. A copy of the sentencing proceedings and any supplementary probation report shall be transmitted to the Department of Corrections pursuant to Penal Code § 1203.01. Attachments may be used but must be incorporated by reference.

Form Adopted by the  
Judicial Council of California  
Effective July 1, 1981

ABSTRACT OF JUDGMENT - COMMITMENT  
SINGLE OR CONCURRENT COUNT FORM  
(Not to be used for Multiple Count Convictions nor Consecutive Sentences)  
FORM DSL 290.1

Pen. C. 1213.5.

CRC

3 P &amp; S

SUPERIOR JR

LOS ANGELES DEPT.

SEP Deputy Clerk

Date: FEBRUARY 27 1989  
HONORABLE RICHARD P KALUSTIANR ZAGON  
G HALL

Reporter

301  
CASE NO. A478490EXHIBIT  
"F2"

(reason)

10:

21 ATTY:

IN PRO PER

CHARGE

01 GARCIA ROBERT

459

OIC

(BOX CHECKED IF ORDER APPLICABLE) X

NATURE OF PROCEEDINGS

71

☐PUBLIC DEFENDER APPOINTED, D.P.D. ☐ OATH FILED PER SECTION 88580 GOVERNMENT CODE☐

DUE TO CONFLICT OF INTERESTS, PUBLIC DEFENDER RELIEVED. PURSUANT TO PENAL CODE SECTION 987.2 GOVERNMENT CODE SECTION 31000 IS APPOINTED.

72

☐

ALTERNATE DEFENSE COUNSEL

73

☐

CRIMINAL PROCEEDINGS ADJOURNED/RESUMED.

74

☐

DEFENDANT ORDERED DELIVERED TO DEPARTMENT OF CORRECTIONS PER SECTION 1203.03 PENAL CODE.

75

☐

ON MOTION, PROBATION AND SENTENCE HEARING/FURTHER PROCEEDINGS CONTINUED TO

76

☐

AT A.M. IN DEPT. SUPPLEMENTAL PROBATION REPORT/PROGRESS REPORT ORDERED

77

☐

DEFENDANT PERSONALLY AND ALL COUNSEL WAIVE TIME FOR SENTENCING. DEFENDANT ORDERED TO RETURN.

78

☒

PROBATION DENIED/PROBATION REVOKED/SENTENCE IMPOSED AS FOLLOWS:

IMPRISONED IN STATE PRISON FOR TERM PRESCRIBED BY LAW TOTAL OF 12 YEARS

COURT SELECTS THE TERM OF YEARS FOR THE BASE TERM AS TO COUNT

PLUS 3 YEARS PURSUANT TO PENAL CODE SECTION 26024 PC. (3-84)

PLUS 1 YEAR AS INDICATED IN BOX 88 BELOW RE: 667 A PC. (2-84)

COMMITTED TO CALIFORNIA YOUTH AUTHORITY, THE TERM OF IMPRISONMENT TO WHICH THE DEFENDANT WOULD

HAVE BEEN SENTENCED PURSUANT TO SECTION 1170 PENAL CODE IS YEARS

IMPRISONED IN LOS ANGELES COUNTY JAIL FOR TERM OF (11372.5 HEALTH &amp; SAFETY CODE) FOR A

FINED IN SUM OF \$ PLUS ADDITIONAL FINE OF \$ ASSESSMENT AND SURCHARGE (1484 PC &amp; 76000GC), TO

TOTAL FINE OF \$ PLUS \$ PAY RESTITUTION FINE IN SUM OF \$ 500.00 PURSUANT TO SECTION 13967(a)

BE PAID TO COUNTY CLERK.

GOVERNMENT CODE PAYABLE TO RESTITUTION FUND

SENTENCE IS SUSPENDED.

77

☐

PROBATION GRANTED FOR A PERIOD OF YEARS PROBATION TO BE WITHOUT FORMAL SUPERVISION.

78

☐

SPEND FIRST DAYS IN COUNTY JAIL ROAD CAMP OR HONOR FARM RECOMMENDED.

WORK FULROUGH PROGRAM RECOMMENDED. NOT TO BE ELIGIBLE FOR COUNTY PAROLE

FINED IN SUM OF \$ PLUS ADDITIONAL FINE OF \$ (11372.5 HEALTH &amp; SAFETY CODE), TO

TOTAL FINE OF \$ PLUS \$ ASSESSMENT AND SURCHARGE (1484 PC &amp; 76000GC), TO

BE PAID TO PROBATION OFFICER IN SUCH MANNER AS HE SHALL PRESCRIBE.

MAKE RESTITUTION OF \$ TO THE VICTIM/RESTITUTION FUND PURSUANT TO SECTION 1203.04

PENAL CODE IN SUCH MANNER AS THE PROBATION OFFICER SHALL PRESCRIBE. TOTAL AMOUNT OF RESTITUTION TO

INCLUDE \$ SERVICE CHARGE AS AUTHORIZED BY SECTION 1203.1 P.C. GOVERNMENT CODE PAYABLE TO

PAY RESTITUTION FINE IN SUM OF \$ PURSUANT TO SECTION 13967(a) SAID FINE TO BE STAYED WHILE DEFENDANT PAYS RESTITUTION

PROBATION DEPARTMENT IN SUCH MANNER AS THEY PRESCRIBE.

AND IF RESTITUTION IS PAID IN FULL, STAY SHALL BE PERMANENT.

MINIMUM PAYMENT OF FINE/RESTITUTION TO BE \$

NOT DRINK ANY ALCOHOLIC BEVERAGE AND STAY OUT OF PLACES WHERE THEY ARE THE CHIEF ITEM OF SALE.

NOT USE OR POSSESS ANY NARCOTICS, DANGEROUS OR RESTRICTED DRUGS OR ASSOCIATED PARAPHERNALIA, EXCEPT WITH VALID

PRESCRIPTION, AND STAY AWAY FROM PLACES WHERE USERS CONGREGATE.

NOT ASSOCIATE WITH PERSONS KNOWN BY YOU TO BE NARCOTIC OR DRUG USERS OR SELLERS.

SUBMIT TO PERIODIC ANTI-NARCOTIC TESTS AS DIRECTED BY THE PROBATION OFFICER, SUCH TESTING TO BE SUSPENDED WHILE THE

DEFENDANT IS IN CUSTODY, IS HOSPITALIZED, OR IS IN A RESIDENTIAL DRUG TREATMENT PROGRAM APPROVED BY PROBATION

OFFICER.

HAVE NO BLANK CHECKS IN POSSESSION. NOT WRITE ANY PORTION OF ANY CHECKS. NOT HAVE BANK ACCOUNT UPON WHICH YOU

MAY DRAW CHECKS.

NOT GAMBLE OR ENGAGE IN BOOKMAKING ACTIVITIES OR HAVE PARAPHERNALIA THEREOF IN POSSESSION, AND NOT BE PRESENT IN

PLACES WHERE GAMBLING OR BOOKMAKING IS CONDUCTED.

NOT ASSOCIATE WITH

COOPERATE WITH PROBATION OFFICER IN A PLAN FOR

SUPPORT DEPENDENTS AS DIRECTED BY PROBATION OFFICER.

SEEK AND MAINTAIN TRAINING, SCHOOLING OR EMPLOYMENT AS APPROVED BY PROBATION OFFICER.

MAINTAIN RESIDENCE AS APPROVED BY PROBATION OFFICER.

SURRENDER DRIVER'S LICENSE TO CLERK OF COURT TO BE RETURNED TO DEPARTMENT OF MOTOR VEHICLES.

NOT DRIVE A MOTOR VEHICLE UNLESS LAWFULLY LICENSED AND INSURED.

NOT OWN, USE OR POSSESS ANY DANGEROUS OR DEADLY WEAPONS.

SUBMIT PERSON AND PROPERTY TO SEARCH OR SEIZURE AT ANY TIME OF THE DAY OR NIGHT BY ANY LAW ENFORCEMENT OFFICER.

OBEY ALL LAWS, ORDERS, RULES AND REGULATIONS OF THE PROBATION DEPARTMENT AND OF THE COURT.

DEFENDANT TO BE GIVEN CREDIT FOR 10.0 DAYS IN CUSTODY (INCLUDES 10.0 DAYS GOOD TIME/WORK TIME) (1-99)

SENTENCE/COUNTS TO RUN CONSECUTIVELY TO/CONCURRENTLY WITH GRANTED TO

STAY OF EXECUTION OF DISMISSED IN FURTHERANCE OF JUSTICE.

ON MOTION OF PEOPLE, COUNTS

COURT ADVISES DEFENDANT OF HIS APPEAL/PAROLE RIGHTS.

"NOTICE RE CERTIFICATE OF REHABILITATION AND PARDON" GIVEN TO DEFENDANT.

DEFENDANT TO PAY COSTS OF PROBATION SERVICES IN AMOUNT OF \$

COURT FINDS THAT DEFENDANT DOES NOT HAVE THE PRESENT ABILITY TO PAY COSTS OF INCARCERATION/LEGAL SERVICES RENDERED/

PROBATION SERVICES RENDERED.

DEFENDANT IS REFERRED TO TREASURER/TAX COLLECTOR FOR FINANCIAL EVALUATION.

FURTHER ORDER AS FOLLOWS/ADDITIONAL CONDITIONS OF PROBATION:

Defendant's motion for new trial is called for hearing. Albert Juarez

and Richard Van Sloten are sworn and testify for the defendant. Motion is

denied.

Notice of Appeal received.

SHERIFF IS ORDERED TO ALLOW DEFENDANT PHONE CALLS AT DEFENDANT'S OWN EXPENSE

DEFENDANT FAILS TO APPEAR WITH/WITHOUT SUFFICIENT EXCUSE

BAIL IF POSTED, FORFEITED/O.R. REVOKED. BENCH WARRANT ORDERED ISSUED/REISSUED/AND HELD UNTIL

NO BAIL/BAIL FIXED AT \$

DEFENDANT APPEARING BENCH WARRANT ORDERED RECALLED/QUASHED RECALL NO. WRITTEN ABSTRACT FILED

REMANDED BAIL BAIL EXON. BOND NO. ON PROBATION

RELEASED O.R. O.R. DISCHARGED IN CUSTODY OTHER MATTER

MINUTES ENTERED

COUNTY CLERK

3 P &amp; S

S159382

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

---

In re ROBERT GARCIA on Habeas Corpus

---

The petition for writ of habeas corpus is denied.

SUPREME COURT  
**FILED**

JUN 11 2008

Frederick K. Ohlrich Clerk

---

Deputy

**GEORGE**  
Chief Justice

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ROBERT GARCIA

Petitioner,

v.

JIMMY WALKER

Respondent

Case No: \_\_\_\_\_

PROOF OF SERVICE

I the undersigned, here by certify that I am over the age of eighteen years, and I (am) (am not) a party to the above entitled action.

on AUGUST 4TH, 2008, I served a copy of:  
PETITION FOR WRIT OF HABEAS CORPUS

By placing said copy in a postage paid envelope addressed to the person hereinafter listed, by depositing said envelope in the United States mail:

1. UNITED STATES DISTRICT  
COURT FOR THE SOUTHERN  
DISTRICT  
880 FRONT STREET, SUITE 4290  
SAN DIEGO, CA.  
92101-8900
- 2.

I declare under the penalty of perjury that the foregoing is true and correct.

(Signature) R. Garcia  
Declarant

JS44

(Rev. 07/89)

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

## I (a) PLAINTIFFS

Robert Garcia

Jimmy Walker

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Kern  
(EXCEPT IN U.S. PLAINTIFF CASES)

FILING FEE PAID	
Yes	DEFENDANT
IF MOTION FILED	
Yes	No
CONSENT TO	
Cons	Pro Se

FILED	
AUG - 7 2008	
CLERK, U.S. DISTRICT COURT	
SOUTHERN DISTRICT OF CALIFORNIA	
BY <u>RYM</u>	DEPUTY

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Robert Garcia  
PO Box 290027  
Represa, CA 95671  
T-51858

ATTORNEYS (IF KNOWN)

'08 CV 1441 W WMC

## II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- PT DEF
- Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

## IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2254

## V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reappointment
<input type="checkbox"/> Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury-Medical Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 640 RR & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<b>PERSONAL PROPERTY</b>	<input type="checkbox"/> 660 Occupational Safety/Health	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (13958)	<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<b>LABOR</b>	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 875 Customer Challenge 12 USC
<input type="checkbox"/> Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 710 Fair Labor Standards Act 29 Labor/Mgmt. Relations	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability		<b>PRISONER PETITIONS</b>	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 892 Economic Stabilization Act
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>		<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 790 Other Labor Litigation	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input checked="" type="checkbox"/> 530 General	<input type="checkbox"/> 791 Empl. Ret. Inc.	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> Security Act	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Tort to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other			<input type="checkbox"/> 950 Constitutionality of State
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 550 Civil Rights			<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 290 All Other Real Property					

## VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

## DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

## VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE 8/7/2008

SIGNATURE OF ATTORNEY OF RECORD

Rmiller

CP